

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into
Implementation of Assembly Bill 970 Regarding
the Identification of Electric Transmission and
Distribution Constraints, Actions to Resolve
Those Constraints, and Related Matters Affecting
the Reliability of Electric Supply.

Investigation 00-11-001
(Filed November 2, 2000)

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

This decision grants Save Southwest Riverside County (SSRC) an award of \$19,708.75 in compensation for contributions to Decision (D.) 01-10-070.

1. Background

SSRC is an unincorporated nonprofit association formed in response to a proposal by San Diego Gas & Electric Company (SDG&E) to construct a 500 kilovolt (kV) transmission line from the Southern California Edison substation at Valley to a proposed substation at Rainbow or Pala. The proposed Valley-Rainbow transmission line would run through southwest Riverside County.

SSRC made its first appearance in Investigation 00-11-001 at the March 13, 2001 prehearing conference (PHC) for Phase 2 of the proceeding. SSRC made its first filing in response to SDG&E's proposal to include the Valley-Rainbow 500 kV Interconnect Project in the Commission's summer 2001 hearings, designed to address urgent bulk power transmission constraints in the state system.

At the conclusion of the PHC on March 13, 2001, Commission staff listed the Valley-Rainbow project as the top transmission constraint in the state, over SSRC's objection. Parties were invited to address the priority and appropriateness of the projects on the Commission staff's "top three" list, including the Valley-Rainbow project.

SSRC advocated against the listing of Valley-Rainbow as the state's top transmission priority and against inclusion of the Valley-Rainbow project in the Commission's summer 2001 hearings. Instead, SSRC supported the consideration of the Valley-Rainbow project in a separate application before the Commission.

On March 29, 2001, the Administrative Law Judge (ALJ) issued a ruling regarding summer hearings in Phase 2. The ruling stated that the Valley-Rainbow project would be evaluated through a separate application process. Additionally, the Valley-Rainbow project was not listed as one of the top transmission constraints in the state for consideration in the summer 2001 hearings.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Pub. Util. Code § 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the PHC or by a date established by the Commission. The NOI must present information regarding the nature and extent of compensation and may request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide "a detailed description of services and expenditures

and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

"in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. NOI to Claim Compensation

SSRC filed a timely NOI to claim compensation on April 12, 2001, as required by § 1804(a). SDG&E opposed SSRC's filing on grounds that SSRC was not a customer and had not shown "significant financial hardship."

ALJ Gottstein ruled on May 21, 2001, that SSRC is a customer as defined by § 1802(b) and that it had met the significant financial hardship test as a "Category 3" customer.

4. Contributions to Resolution of Issues

In order to be compensated for its participation in a Commission proceeding, a party must demonstrate that its participation substantially assisted in the making of a Commission order or decision. As we stated in the past, this requirement is necessary to ensure “that the compensated participation provides value to ratepayers.”¹ A party may make a substantial contribution to a decision in various ways. It may offer a factual or legal contention upon which the Commission relied in making a decision. It may advance a specific policy or procedural recommendation that the ALJ or the Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party’s position in total.

SSRC argues that it contributed substantially in this proceeding by advancing certain procedural recommendations during the PHCs and in comments requested by the ALJ that addressed the schedule and scope of Phase 2. In particular, SSRC advocated against consolidation of the Application for a Certificate of Public Convenience and Necessity (CPCN) of the Valley-Rainbow transmission project (Valley Rainbow) with this investigation, or addressing in any way the need for Valley-Rainbow in the summer 2001 Phase 2 hearings. In addition, SSRC argues that its testimony contributed substantially to the Commission’s decision by noting limitations in the conclusions that could be drawn from the modeling efforts in this investigation, and by suggesting improvements for future modeling activities.

¹ See D.98-04-059, at 39.

Southern California Edison Company (SCE) and SDG&E argue that SSRC made no substantial contribution to the Commission decision. Regarding the procedural recommendations made by SSRC, SCE and SDG&E contend that they were duplicative of SDG&E's position and did not have a meaningful impact on the ALJ's decision to address the need for Valley-Rainbow in the separate CPCN proceeding. SCE and SDG&E also argue that SSRC's testimony did not contribute any information that had not already been addressed by the ALJ in rulings prior to the submission of testimony and in the Joint Testimony submitted by SDG&E, SCE, the California Energy Commission and the California Independent System Operator (ISO).

We have reviewed the record in this proceeding, and find that SSRC made a substantial contribution with its procedural recommendations during the initial scoping of Phase 2, but did not offer a substantial contribution in its very limited participation during evidentiary hearings.

5. SSRC's Contribution During PHCs

During the March 13, 2001 PHC, the parties discussed potential transmission project(s) to be addressed during the Phase 2 summer hearings. At the end of the PHC, the assigned ALJ gave parties an opportunity to file further comment on this issue. She also directed parties to comment on whether future applications requesting a CPCN for individual projects, such as Valley Rainbow or Path 15, should be consolidated with this investigation. A further PHC was held on March 27, 2001 by phone.

By ruling dated March 29, 2001, the ALJ determined that summer hearings would address the Southern California link to the Southwest. With regard to the Valley-Rainbow project, she stated:

“On March 23, 2001, SDG&E filed an application requesting a certificate of public convenience and necessity (CPCN) for the Valley-Rainbow 500 kV line....I will coordinate closely with the Commissioner and Administrative Law Judge assigned to the CPCN application regarding the scheduling of hearings and other procedural matters. As discussed during the March 27, 2001 PHC, SDG&E’s application for the Valley-Rainbow 500 kV line will be evaluated on a “stand-alone” basis, i.e., without presupposing any enhanced benefits from this project being augmented by a Southwest power link. If the Commission issues a final decision in this proceeding regarding the cost-effectiveness of a new transmission link to the Southwest, nothing in today’s ruling precludes those determinations from being considered in the Valley-Rainbow CPCN proceeding. However, we will not delay processing the stand-alone CPCN analysis by consolidating it with this investigation.” ²

We find no merit to SDG&E’s and SCE’s contentions that SSRC did not make a substantial contribution to the decision making process concerning the scope of Phase 2 hearings. Both SCE and SDG&E recommended Valley-Rainbow as the top priority for Phase 2 hearings in their March 20, 2001 comments. SDG&E also supported consolidation of Valley-Rainbow with the investigation.³ In contrast, SSRC took the position, adopted by the ALJ, that Valley Rainbow should not be selected for review in this investigation. In its March 20, 2001 comments, SSRC presented eight pages of policy and legal arguments in support of its position that Valley Rainbow should instead be evaluated through the

² ALJ Ruling Regarding Summer Hearings in Phase 2, March 29, 2001, at 4-5.

³ Statement of SCE on Phase 2 Transmission Projects, March 20, 2001, at 1. Comments of San Diego Gas & Electric Company On Projects For Phase 2 Need and Alternatives Analysis, March 20, 2001, at 1.

separate CPCN application process. SSRC also advocated this position at both PHCs. In sum, we find that SSRC made a substantial contribution to the prioritization of projects in this investigation.

6. SSRC's Contribution During Hearings

We do not find that SSRC's participation in this proceeding beyond the scoping phase substantially contributed to the Commission's decision. SSRC's contribution beyond that point was limited to two pages of intervenor testimony. In that testimony, SSRC observed that no conclusions could be made that an in-state link, such as Valley-Rainbow, is needed because the Joint Testimony did not address in-state transmission constraints in any way.⁴ We do not consider this observation to be a substantial contribution to D.01-10-070, even though SSRC's position was acknowledged in the text of the final order.⁵ As discussed above, the ALJ's scoping ruling had already eliminated the possibility that the Commission would make findings regarding Valley-Rainbow during its evaluation of need for a Southern California Link to the Southwest. Consistent with that ruling, the parties to the Joint Testimony stated that "this testimony addresses only links to out-of-state resources and does not address whether in-state transmission upgrades are needed to maintain reliable operations" (emphasis added).⁶ Hence, the observation that SSRC articulated in its written

⁴ SSRC also attached a letter that SSRC sent to the ISO expressing its position that the modeling results should not depend on construction of the Valley-Rainbow line.

⁵ D.01-10-070, at 31.

⁶ See Exhibit 1, at 2; See also p. 7, lines 24-26): "The scenarios are not based on technical studies and do not take into account internal transmission constraints within

Footnote continued on next page

testimony had already been made clear by the ALJ's rulings and by the Joint Testimony.

In its testimony, SSRC also recommends that modeling of economic need for transmission projects should allow for the partitioning of regions within the state into sub-regions and provide for simulating transmission constraints between the sub-regions. This recommendation refers to a discussion in the Joint Testimony about a stakeholder process being conducted at the ISO to develop a methodology for evaluating the economic need of major transmission projects. On page 30 of D.01-10-070, the Commission directs the utilities to jointly file the stakeholder report in this investigation, but does not adopt SSRC's recommendation or take any position on methodological issues in advance of that filing. Therefore, SSRC did not make a substantial contribution on this issue.

Moreover, SSRC's testimony did not address any aspect of whether the Southern California Link to the Southwest is likely to be needed for reliability purposes before 2008, which was the focus of the evidentiary hearings and the Commission's order. SSRC did not participate in any cross-examination during the hearings or file briefs on the issues that were addressed during those hearings.

In sum, beyond its participation at the March 27, 2001 PHC in this proceeding, we find that SSRC did not make a substantial contribution to the Commission's determinations in D.01-10-070.

California" and p. 19. "Again, no assessment was undertaken on the need for in-state transmission upgrades."

7. The Reasonableness of Requested Compensation

SSRC requests compensation of \$29,401.25 in attorneys' fees, \$4,950 in expert fees, and \$1,643 in expenses, totaling \$35,994.25.

For attorney time on behalf of the firm of Shute, Mihaly & Weinberger LLP, Marc B. Mihaly claims 21.75 hours at an hourly rate of \$315 for a total of \$6,851.25. Osa Lausanne Armi claims 36.2 hours at an hourly rate of \$220 for a total of \$7,964. Janette E. Schue claims 88.4 hours at an hourly rate of \$165 for a total of \$14,586. Mihaly is a partner with over 26 years of legal and regulatory experience. Armi is a mid-level associate who has practiced with the firm for four years. Schue is an associate, joining the firm in the fall of 2000. Hours claimed were reduced by 50% for work involving the preparation of the compensation request.

SSRC seeks an hourly rate of \$225 for its expert witness, Wayne R. Schmus, for 22 hours in preparing filed testimony.

Direct expenses totaled \$1,643, with the bulk of it related to postage and copying costs.

7.1 Hours Claimed

We have found that SSRC made a substantial contribution to the prioritization of projects in this investigation. However, that contribution ended with the PHC of March 27, 2001. We have found that SSRC's participation in this proceeding beyond the scooping phase did not contribute substantially to the Commission's decision. Accordingly, we have discounted attorney time spent on substantive matters after March 27, 2001. For Mihaly, this means a reduction of 8.8 hours; for Armi, a reduction of 23.1 hours; and for Schue, a reduction of 21.1 hours. We also have discounted the entire 22 hours claimed for SSRC's expert witness, whose time appears to have been solely devoted to testimony

filed after March 27, 2001. The revised compilation for attorney time is as follows:

Attorney	Hours Claimed	Hours Awarded	Total
M. Mihaly	21.75	12.95	\$4,079.25
O. Armi	36.2	13.1	2,882.00
J. Schue	88.4	67.3	11,104.50
Total Attorney Fees			\$18,065.75

SDG&E argues that the 49.25 attorney hours claimed for preparation of the NOI and request for compensation are excessive, and it argues that NOI time should be reduced by 50% to conform to the reduction for the compensation request. The Commission has stated that its policy of reducing attorneys' fees for time spent on award requests is based on the fact that award requests "are essentially bills for services, and do not require a lawyer's skill to prepare." (D.98-04-059, at 51.) Unlike award requests, which primarily involve computation and review of billing records, preparation of an NOI involves significant questions of law—who is a "customer" and what constitutes showing of "significant financial hardship" under Pub. Util. Code §§ 1802(b) and 1802(g) and Commission decisions. Moreover, in this case, SSRC responded to two SDG&E motions contesting the NOI. For these reasons, we find SSRC's hours and rates for preparation of the NOI and award request are reasonable.

7.2 Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the "market rate paid to persons of comparable training and experience who offer similar services." ⁷ SSRC has shown that the rates

⁷ Pub. Util. Code § 1806.

requested are within the range of rates awarded by the Commission for attorneys of similar experience and are in line with rates identified in the *Of Counsel* 700 annual survey of the nation's largest law firms, and we adopt the rates sought without change.

7.3 Other Costs

SSRC claims \$1,643 for costs relating to photocopying and postage, a reasonable sum that we adopt here.

8. Award

We award SSRC \$19,708.75 for contributions to D.01-10-070. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after SSRC filed this compensation request (March 12, 2002) and continuing until a utility makes full payment of its share of the award.

9. Allocation of Award Among Utilities

The award granted today should be paid pursuant to Pub. Util. Code § 1807. As we did in D.00-11-002, we will assess responsibility for payment in accordance with the respective 1999 California jurisdictional revenues of Pacific Gas and Electric Company, SCE, and SDG&E.

Waiver of Comment Period

This is a compensation decision pursuant to Pub. Util. Code § 1801 and Rule 77.7(f)(6) of the Rules of Practice and Procedure. Accordingly, the otherwise applicable 30-day review and comment period is being waived.

Findings of Fact

1. SSRC timely requested compensation for contributions to D.01-10-070 as set forth herein.

2. SSRC requests hourly rates for its attorney and consultant that are reasonable under the circumstances.

3. The miscellaneous costs incurred by SSRC in this proceeding are reasonable.

4. SSRC made a substantial contribution during the initial scoping of Phase 2 but did not make a substantial contribution thereafter.

Conclusions of Law

1. SSRC has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation.

2. SSRC should be awarded \$19,708.75 for contributions to D.01-10-070 in this proceeding.

3. This order should be effective today so that SSRC may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. Save Southwest Riverside County is awarded \$19,708.75 as set forth herein for substantial contributions to Decision 01-10-070.

2. The award should be paid pursuant to Pub. Util. Code § 1807 and shall be paid by Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company based on the utilities' respective 1999 California jurisdictional revenues. Interest shall be paid at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release, G.13, with interest beginning on March 12, 2002, and continuing until a utility has made full payment of its share of the award.

This order is effective today.

Dated _____, 2002, at San Francisco, California.